

Report on the

**BOARD OF EXAMINERS OF
ASSISTED LIVING
ADMINISTRATORS**

Montgomery, Alabama



**Department of
Examiners of Public Accounts**

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July 16, 2003

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Board of Examiners of Assisted Living Administrators** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Examiners of Assisted Living Administrators**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

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PROFILE

Purpose/Authority

The Board of Examiners of Assisted Living Administrators was first created by Act 1057, *Acts of Alabama 2001*. The purpose of the board is to protect the health, safety, and welfare of the public by providing and enforcing standards for licensure and regulation on persons who serve, act, and practice as assisted living administrators. The *Code of Alabama 1975*, Sections 34-2A-1 through 34-2A-16 provides the current statutory authority for the board.

Board Characteristics:

Members	9 members
Term	No more than two consecutive full 3-year terms
Selection	Appointed by the Governor from a list of nominees provided by Assisted Living Association of Alabama, the Medical Association of Alabama, and the Alabama Nursing Home Association respectively.
Qualifications	<p>Five (5) must be duly licensed and registered assisted living administrators</p> <ul style="list-style-type: none">• One (1) must be a physician licensed under the laws of the state who is actively concerned in a practice with the care of chronically ill and infirm, aged patients\• One (1) must be a licensed nursing home administrator who in the same or contiguous facility manages assisted living beds• Two (2) must be consumer members with at least one consumer member being 65 years of age or older
Minority Representation	No statutory requirement. One (1) minority member.
Geographical Representation	No statutory requirement.

Consumer Representation According to the board's enabling statutes, two board members must be consumers. There are two consumer members.

Compensation \$75/day for the time spent in the performance of official duties.

Board members receive travel expense reimbursement at the same rate as state employees.

Operations:

Administrator Theresa Jordan, Executive Secretary
Appointed by the chairperson of the board.
Annual salary of \$35,000.00 set by the board.

Location 400 South Union Street, Suite 100
Montgomery, AL 36130

Type of License Category I Licenses (Assisted Living Facilities)
Category II Licenses (Specialty Care Assisted Living Facilities)
Provisional Licenses

Licenses issued as of May 16, 2003

Category I Licenses - 29
Category II Licenses - 110
Provisional Licenses – 301

Renewal Licenses are renewed annually during the anniversary month of issuance.

Examinations A board-administered test was developed by Savage Consultants, Inc. and is graded by Savage Consultants, Inc., a professional testing service.

Continuing Education Category I Licensees – 12 hours annually
Category II Licensees – 18 hours annually

Reciprocity

The board may grant reciprocity to an assisted living administrator:

- Who has been issued a license by another state or
- Who has been issued a certificate of qualification by a national organization.

The other state or national organization must have maintained a system and standards of qualification and examinations that were substantially equivalent to those required in Alabama at the time of issue.

The other state or national organization must give similar recognition to Alabama licensees.

Employees

1 (one)

Legal Counsel

Elizabeth Butler, Assistant Attorney General

Subpoena Power

No

Internet Presence

The board is working with Information Services Division of the Department of Finance to establish an Internet website

Attended Board Member Training

The executive secretary attended the board member training session. No board members have attended.

Financial Information**Source of Funds**

Licensing fees

State Treasury

Yes

Unused Funds

Retains unexpended funds.

SIGNIFICANT ITEMS

1. **The board adopted an administrative rule granting the board subpoena power without specific statutory authority, an improper expansion of the board's statutory authority.** The board promulgated Administrative Code Section 135-X-7-.02(5) which states in part, "the board or hearing committee shall have the authority to issue subpoenas, compel the attendance of witnesses, administer oaths and take testimony concerning all matters within the jurisdiction of the board..."

The board's enabling statutes do not grant subpoena power to the board. The Attorney General in Opinion 86-00157 concluded that absent a specific provision granting the power to subpoena witnesses, such power does not exist and can not be added by interpretation.

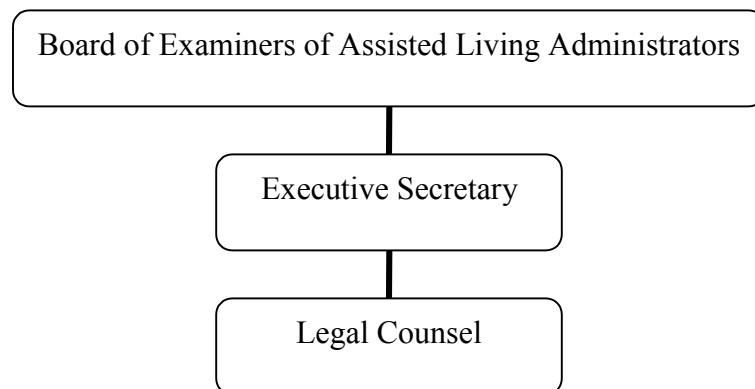
2. **The board improperly adopted an administrative rule setting the fee charged for a check returned for insufficient funds at an amount exceeding the maximum allowed by law.** The *Code of Alabama 1975*, Section 34-2A-1 through 34-2A-16 authorizes the board to set fees and administrative fines. Board Rule 135-X-13-.01 states that the fee requirements shall be set and annually adopted by the board and shall be published after the last board meeting held prior to October 1 of each year. In the board's second meeting, held July 10, 2002, the fee for checks returned for insufficient funds was set at \$35.00.

The *Code of Alabama 1975*, Section 8-8-15(b) states, "Commencing January 1, 1999, the bad check charge in subsection (a) shall increase by one dollar (\$1) per year through January 1, 2003, at which time the maximum bad check charge shall be thirty dollars (\$30)."

3. **The terms of all members of the board are set to expire simultaneously.** The *Code of Alabama 1975*, Section 34-2A-3(d) sets the terms of the board members at three years with no member serving more than two consecutive full three-year terms but does not include language requiring staggered expiration dates of the

board member terms. The failure to stagger the terms of the board members could result in the board being devoid of experience in the event no members are reappointed at the expiration of their terms.

ORGANIZATION



PERSONNEL

The board presently employs one (1) person, the executive secretary; a white female. The executive secretary is appointed by chairperson of the board. Elizabeth Butler of the Attorney General's Office provides legal services for the board.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 440

Operating Disbursements per Licensee (2000-2001 fiscal Year) - \$ 56.56

Number of Persons per Licensee in Alabama and Surrounding States

	<u>Population (Estimate)</u>	<u>Number of Licensees</u>	<u>Persons Per Licensee</u>
Alabama	4,486,508	440	10,196
Florida	16,713,149	2,300	7,267
Georgia Δ	8,560,310	1,600*	5,351
Mississippi Δ	2,871,733	200*	14,359
Tennessee Δ	5,797,289	N/A*	N/A

* Number of assisted living facilities located in the state

ΔGeorgia administrators are not required to be licensed or certified

ΔMississippi administrators are not required to be licensed or certified

ΔTennessee administrators are not required to be licensed or certified

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complied with procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are also notified of proposed changes through a bi-monthly newsletter. The board also plans to post a draft of proposed rules on its Internet website when the website becomes functional.

Complaint Resolution

Board Rule 135-X-8-.01 provides the procedures for documentation, receipt, and investigation of complaints relating to board licensees and illegal practices. No complaints have been filed with the board since its inception effective May 9, 2002.

Complaint Process

Initial Documentation Complaints shall be submitted to the board in writing on forms provided by the board.

Anonymous Complaints It is yet to be determined if the board will accept anonymous complaints.

FINANCIAL INFORMATION

Schedule of Fees

The *Code of Alabama 1975*, Sections 34-2A-8, 34-2A-10, 34-2A-11, and 34-2A-12 authorizes the board to set fees. The following fees have been set.

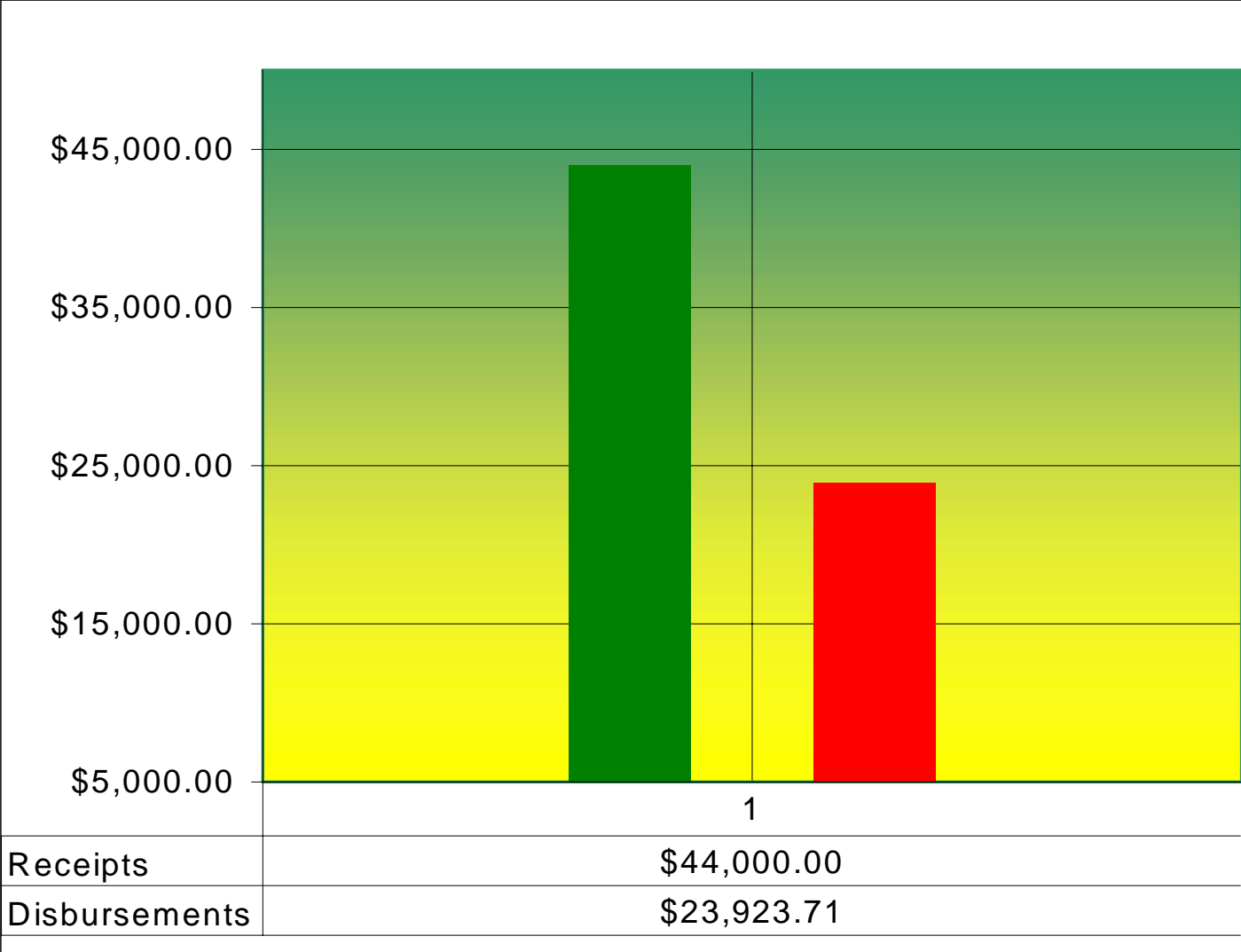
<u>Fee</u>	<u>Administrative Rule</u>	<u>Amount</u>
Initial Application	135-X-13	\$ 50.00
Examination Fee:	135-X-13	
Test I		125.00
Test II (Part A and B)		150.00
License Fee	135-X-13	100.00
License Renewal Fee	135-X-13	150.00
Reciprocity Questionnaire Fee	135-X-13	50.00
Late Renewal Penalty	135-X-13	250.00
Inactive Reactivation Fee	135-X-13	250.00
Check Returned for Insufficient Funds Fee	135-X-13	35.00
Emergency Permit Fee	135-X-13	200.00
Reciprocity Fee	135-X-13	100.00
Administrative Fee	135-X-13	75.00
Administrative Fines	135-X-13	1,000.00
Copies (per page):	135-X-13	
Pages 1-25		0.75
Page 26+		0.25

Schedule of Cash Receipts, Disbursements, and Balances

March 1, 2002 through September 30, 2002

	<u>2001-02</u>
<u>Receipts</u>	
Certification and Examination Fees	<u>\$44,000.00</u>
 <u>Disbursements</u>	
Personnel Costs	8,826.90
Employee Benefits	2,374.31
Travel-in-State	1,101.16
Rentals and Leases	11,200.00
Professional Services	38.75
Supplies, Materials & Operating Expenses	<u>382.59</u>
Total	<u>23,923.71</u>
 Excess (Defficiency) of Receipts Over Disbursements	20,076.29
Cash Balance at Beginning of Year	0.00
 Cash Balance at End of Year	20,076.29
Reserved for Year-end Obligations	<u>(2,100.00)</u>
Unobligated Cash Balance	<u><u>\$17,976.29</u></u>

Receipts Vs Operating Disbursements (chart)



QUESTIONNAIRES

Board Member Questionnaire

Questionnaires were mailed to all nine board members. 5 responded.

Question #1

Would the absence of the Board of Examiners of Assisted Living Administrators be detrimental to the public welfare?

 5 Yes
 No
 No Response

Question #2

What changes in Alabama laws regulating the practice of Assisted Living Administrators would you recommend?

“That administrators can ask for criminal background checks on all employees.”

“None. I believe the current laws are adequate.”

“None”

“Establish criminal background checks. Establish a preceptorship for new administrators. These and many other rules would ensure quality care for our Alabama Seniors.”

“None”

Question #3

What is the most significant issue currently facing the board?

“Continuing to test all administrators & have them pass the exam.”

“Testing current practicing administrators by 9-1-03”

“Adequately trained personnel”

“To establish a testing criteria after September 2003”

“Licensure of current administrators”

Question #4

What is the board doing to settle this issue?

“This will be completed this year.”

“We have several test dates scheduled throughout the state which will allow for testing in a timely manner.”

“Monitor and evaluate the training”

“The board is working to achieve this goal.”

“Developed licensure exam. Currently administering monthly to end of 8/03”

Question #5

Is the board adequately funded? If not, what actions should be taken to remedy the situation?

☐ 2 ☐ Yes
☐ 1 ☐ No
☐ 2 ☐ No Response

“We need a stable source of funding.”

Question #6

What is the purpose of your fiscal year end fund balance?

“N/A”

“To continue board functioning”

“Meet needs of the board”

“To ensure compliance with the statute.”

“Expenses associated with the development of a curriculum for further education and training.”

Licensee Questionnaire

Questionnaires were mailed to one hundred licensees. Forty-three responded.

Question #1

Is the regulation of assisted living administrators by the board necessary to protect the public welfare?

__26__ Yes
__12__ No
__5__ No Response

Question #2

Do the laws, regulations, and policies regulating assisted living administrators in Alabama constitute an unnecessary restriction on the profession?

__13__ Yes
__29__ No
__1__ No Response

“Somewhat – more so to small operators”

Question #3

Are you adequately informed of changes to the rules and laws concerning the practice of assisted living administrators in Alabama?

__34__ Yes
__7__ No
__2__ No Response

Question #4

Did the board perform the licensing and renewal process in a timely manner? If not, how long did it take to receive your license?

__34__ Yes
__3__ No
__6__ No Response

__4__ 1 month
__2__ 2 months
__3__ 3 months or longer

“New administrator, not yet licensed”

“N/A – Already a nursing home administrator”

“Have not taken exam yet”

Question #5

Do you think the board and its staff are doing all they can to satisfy the needs of persons who use the services of the board?

__30__ Yes
__2__ No
__10__ Don't Know
__1__ No Response

“It's too early to say, but I would say yes up to this point.”

Question #6

Are you satisfied with your dealings with the Board of Examiners of Assisted Living Administrators?

__32__ Yes
__4__ No
__7__ No Response

“Very”

Question #7

Do you consider mandatory continuing education necessary to competently perform assisted living administration services?

__33__ Yes
__8__ No
__2__ No Response

“To some extent”

“This is a waste of money”

Question #8

What do you think is the most significant issue currently facing the practice of assisted living administrators in Alabama?

“The cost of operation being elevated by over-regulation will eventually eliminate small facilities even though they are providing a higher quality of care.”

“Preventing and dealing with continuous falls”

“Recruitment of nursing staff”

“Differences between regular ALF’s and SCALF. This is segregation & up to a point interaction with all levels of individuals is beneficial. I think families should have a say if they feel their loved one is safe in a regular ALF.”

“Staff Training and certification”

“To make ends meet while supplying quality care.”

“N/A”

“Affordability of AL services – Many who need this level of care have to go to more restrictive care due to finances. Administrators have to be able to demonstrate broad knowledge of all aspects of operation – facility development, physical plant needs, fiscal management, community relations, resident care needs/levels of care, and a tremendous understanding of staff and today’s work environment.”

“Dementia care & criteria for placement”

“Obtaining industry related info regarding staffing and operational management of facilities.”

“Unnecessary burdensome regulations”

“Drugs, liability insurance, staff issues”

“Inadequate staffing; difficulty in attracting competent caring professionals to the health care industry.”

“The unnecessary regulations, re: medication administration”

“I have been concerned about the whole assisted living industry moving closer and closer toward a nursing home regulatory environment. There has been a huge push the past 6 years away from a residential model to a medical model. With the make up of the BOE, I remain concerned about a nursing home philosophy continuing to creep into the assisted living arena. We don’t need the nursing home mentality shaping assisted living – which has been an all private pay market. I’ve wondered if this has been about Medicaid reimbursement coming to SCALF’s.”

“The fact that there are unlicensed facilities out there being run by unlicensed administrators!”

“Trying to keep up with all the new rules”

“Finding quality staff that are really interested in a long term commitment to this care field”

“The unnecessary examination”

“Maintaining qualified, caring staff to take care of residents”

“Keeping facility filled and finding a maintenance man that we can afford, rent too high”

“Maintaining current information regarding regulations”

“Staffing”

“CEU’s – Programs that assist administrators to provide a better service to their facilities and residents”

“Insurance and Regulatory Issues concerning medication administration”

“The lack of cooperation with the Department of Public Health”

“Trying to survive financially until the Medicaid issue is up and running so more people can afford to live in assisted living facilities.”

“Unnecessary Government regulations on an industry that for all intent and purposes was designed for private paying American Citizens to be able to live in an atmosphere of independence and choice.”

Question #9

How has the board addressed the issue?

“It has contributed to the problem by requiring higher levels of education on providers who have already been in the business for years.”

”The surveyors have said they, the Residents, need to be transferred out after 2 or more falls. I say, what will prevent them from falling is a skilled nursing environment.”

“Not aware”

“Would like to see programming established in Junior college systems.”

“Through continuing education & cutting insurance cost, among others, control of paperwork and time-consuming gov’t regulations, information and questionnaires like this.”

“N/A”

“ALAA’s educational opportunities”

“Not a board issue”

“Don’t know”

“The board would be the issue”

“As best they could”

“To my knowledge they have not”

“No. The board has as much representation from nursing homes as it does assisted living. I have repeatedly expressed my opinion the nursing home administrators should not have reciprocity with assisted living administrators. They should have to pass the same test.”

“Part of it has been addressed by the mandatory licensed administrators being put into place.”

“Making the passing of an examination compulsory”

“By providing training and seminars for all staff levels”

“I don’t think it’s the board’s issue but it is a problem for us.”

“The board and association is adequately addressing this issue.”

“N/A”

“The board is doing as much as they can to speed up the process”

“The board, and government control of a private industry is the issue!”

Question #10

Please feel free to discuss any matters of concern to you not addressed by the questionnaire.

“The assisted living industry is being consumed by large corporations and large combination (Nursing home/ALF) facilities. These entities are pushing toward government funding which is what caused the loss of quality care in Nursing Homes. Private pay makes providers try harder. The only reason for adm. licensure is to meet the statute for Medicaid/Medicare reimbursement not to raise the quality of care as some would lead you to believe. In the process a new level of care, ‘specialty care’ was created which I believe is in direct conflict with the code of Federal Regulations issued by the Supreme Court following the “Olmstead” decision. These mandate that persons be offered care in the least restrictive setting and that even if the state creates a special setting, i.e. “specialty care” that people are not obligated to choose it. The way this all relates to Adm. licensure is that if you acknowledge the Federal Code the new “specialty care” as well as Adm. licensure are no longer necessary, and the new Board of Examiners is just another hog at the government trough at feeding time.”

“The industry will be destroyed if regulations increase. Cannot run & operate on a small budget if required to hire professionals.”

“N/A”

“The licensure issue was long in coming to a very positive end. I’m glad it is in place.”

“I personally believe that this BOE just sets up another bureaucracy. I strongly feel that there do need to be standards to be met in the industry, but I don’t feel this BOE is going to be effective in raising the quality of services actually delivered. I don’t think the current setup is equitable for small rural group homes. I am enclosing a copy of a letter I sent to the chairman Eddie Cummings earlier in the year.

I am the owner/administrator of [REDACTED] I currently have 14 residents at the moment. I have had as few as 12 in the past year. Our monthly residency rates run \$1400 per month. There is another assisted living home here in Abbeville who does not have as high a census as I do, but they are owned and operated by a county health care authority which is subsidized by a 5.5 mil ad valorem tax, so they can easily survive a low census.

I am very concerned about the pressure being put on the small group homes, particularly in rural areas. While I certainly hope that it is not intentional, the reality is that it is inequitable to charge the same license fees to a small 5 bed group home as it is to a 120 congregate home!! I have been concerned over the past few years that the small group homes are not being represented fairly in policy decisions. Small homes are fighting for their survival! I challenge someone to look at how many have closed or been purchased by other corporations in the past 4 years. The administrator license fees are going to cost me \$550 to get 2 administrators licenses and then \$300 per year every year after that to get them renewed. A large 100 bed facility in Birmingham or Montgomery would have the same cost that I do. If this home stay at 87.5% full and charges \$1900 per month, the annual gross would be \$1,995,000. My small home gross at 87.5% capacity would be \$235,200. The license cost/gross revenue ratio (for 2 administrators) runs a miniscule .027% for the large home, while mine will run .234%. This is entirely inequitable, especially when so many small group homes are fighting for their lives in rural areas! This does not even address how much harder it will be to hire a licensed administrator in small town Alabama if you have to hire a new one. Do you think someone (a licensed administrator in Montgomery—or Mobile—or even Dothan) is going to want to relocate to Abbeville for a \$20,000 salary??? I might be training some to go to Mobile, Montgomery, or Dothan, but I don’t think that is going to work the other way. I would be interested in your thoughts about this.

I strive to keep my residency rates as low as possible, and even then there are so many who need our services and yet are not able to afford them. I have come to realize in the past 7 years how impersonal and insensitive bureaucracies are. I can only hope that this board will aggressively solicit and consider input from small group homes in rural areas. So many times I don’t think policy makers realize how policies filter down to real life situations—especially from urban to rural areas.

I am formally requesting the Board of Examiners to carefully review the renewal fees for small group homes. Thank you for your cooperation.”

“I have owned and operated my Assisted Living Facility for 20 years, a 16 bed facility. The taking of an examination is a complete waste of time, and will not change the care given our residents.”

“This misguided need for control of a private industry has just about done more damage to it than could ever be repaired by government regulation.

If I were an assisted living resident and I found my rights as guaranteed me under the Constitution and Bill of Rights being abused as much as this assault on assisted living, I would file the Mother of all lawsuits.

To those who want Medicaid money, I say, open a nursing home. For the government to create a quasi-nursing home industry to help facilitate the bad decisions of some people who were trying to circumvent the system to begin with, is not only sad, but costly.”

APPENDICES

Enabling Statutes

CHAPTER 2A. ASSISTED LIVING ADMINISTRATORS.

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this chapter is effective March 1, 2002.

§ 34-2A-1. Definitions. [AL ST SEC 34-2A-1]

Current through End of 2002 Regular Session

Historical Notes

For purposes of this chapter, the following terms shall have the following meanings:

(1) Assisted living administrator. Any individual who is charged with the general administration of an assisted living facility or a speciality care assisted living facility, whether or not the individual has an ownership interest in the facility, and whether or not his or her functions and duties are shared with one or more other individuals.

(2) Assisted living facility. Any facility, including both assisted living facilities and speciality care assisted living facilities, that is defined as such for licensing purposes pursuant to Section 22-21-20. For purposes of this chapter, the term "assisted living facility" shall not include family assisted living facilities as the term is defined in the rules and regulations promulgated by the Department of Public Health.

(3) Board. The Board of Examiners of Assisted Living Administrators of the State of Alabama.

(4) Executive secretary. The executive secretary of the board.

(5) Practice of assisted living administration. The planning, organizing, directing, and control of the operation of an assisted living facility.

(6) Provisional assisted living administrator. An individual who has been issued a provisional license by the board.

(7) Provisional license. A temporary license issued to a provisional assisted living administrator by the board.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-2. License required; permission to supervise multiple facilities. [AL ST SEC 34-2A-2]

Current through End of 2002 Regular Session

Historical Notes

(a) All administrators of assisted living facilities or specialty care assisted living facilities as recorded in the records of the State Department of Public Health shall be issued a provisional license, as defined herein, upon the effective date of this act. On and after September 1, 2003, no assisted living facility in the state may operate unless it is under the supervision of an administrator who holds a currently valid assisted living administrator's license, or new initial provisional license, issued by the board. No person shall practice or offer to practice assisted living administration in this state or use any title, sign, card, or device to indicate that he or she is an assisted living administrator unless the person shall have been duly licensed as an assisted living administrator or as a provisional assisted living administrator. In the event an assisted living administrator dies, unexpectedly resigns, becomes incapacitated, or has his or her license revoked, the person or persons then responsible for the management of the assisted living facility shall immediately notify the board and the State Board of Health. The board may issue an emergency permit to a person performing the functions of administrator in the assisted living facility for a reasonable period of time from the date of death, unexpected resignation, incapacitation, or revocation of the license of the assisted living administrator, but not to exceed 120 days. Although the State Board of Health, in its discretion, may permit the assisted living facility to continue to operate under the supervision of a person issued an emergency permit, nothing in this section shall be construed as prohibiting the State Board of Health from denying or revoking the license of the assisted living facility where the State Board of Health has determined that the person with the emergency permit does not demonstrate an ability or willingness to comply with State Board of Health rules governing assisted living facilities or where the State Board of Health has determined that the facility is not otherwise in compliance with those rules.

(b) Nothing in this section shall be construed to prohibit a licensed assisted living administrator from supervising more than one assisted living facility if specific permission is granted by the State Department of Public Health.
(Act 2001-1057, § 2.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-3. Board of Examiners of Assisted Living Administrators. [AL ST SEC 34-2A-3]

Current through End of 2002 Regular Session

Historical Notes

(a) There is hereby created a Board of Examiners of Assisted Living Administrators composed of nine members, seven members as set out in this subsection, and two additional consumer members as set out in subsection (b). The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The seven original members shall be composed as follows: Five members shall be assisted living administrators duly licensed and registered under this chapter; one member shall be a physician licensed under the laws of the state who is actively concerned in a practice with the care of chronically ill and infirm, aged patients; and one shall be a licensed nursing home administrator who in the same or contiguous facility manages assisted living beds. Appointments to the board for those positions to be held by assisted living administrators shall be made by the Governor from a list of three nominees for each position to be submitted to the Governor by the Assisted Living Association of Alabama, Inc. The appointment of the nursing home administrator shall be made from a list of three nominees submitted to the Governor by the Alabama Nursing Home Association, Inc. The appointment to the board of the member for the position to be held by a physician shall be made from a list of three nominees submitted to the Governor by the Medical Association of the State of Alabama.

(b) Within 30 days of March 1, 2002, the Governor shall appoint two consumer members of the board. The consumer members shall vote in all matters except licensure or discipline of licensees or applicants. At least one consumer member shall be 65 years of age or older and no consumer member, or a spouse or immediate family member of a consumer member, shall be a licensee of the board or be employed in the assisted living profession.

(c) All members of the board shall be citizens of the United States and shall be residents of the state.

(d) Each member shall serve a three-year term and no board member shall serve more than two consecutive full three-year terms. All members shall continue to serve until the Governor appoints a successor.

(e) The Governor may remove any board member for misconduct, incapacity, incompetence, or neglect of duty after the board member so charged has been served with a written statement of charges and has been given an opportunity to be heard. Absence from any three consecutive meetings of the board within a calendar year, without cause acceptable to the Governor and the board, shall be deemed cause for removal.

(f) Any vacancy created by the death, resignation, or removal of any board member shall be filled by the Governor for the unexpired term in the same manner as required by this chapter to make appointments.

(g) Each member of the board shall receive a per diem fee of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) to be determined by the board for the time spent in the performance of official duties. Each member shall be reimbursed for all necessary and proper travel and incidental expenses incurred in implementing this chapter as is provided to state employees by the laws of the state and regulations of the

State Personnel Director. In setting the per diem fee, the board shall give due consideration to funds which are available for that purpose.

(h) The board shall hold four or more meetings a year. A majority of the members of the board shall constitute a quorum at any meeting except as provided in Section 34-2A-13. A majority vote of the members present shall be sufficient to transact the business of the board except as provided in Section 34-2A-13. Meetings may be called by the chair or by a majority of the members of the board. Members shall be given seven days' written notice of all meetings.

(i) The board shall annually elect from its members a chair and a vice-chair, at the first meeting of the board held after October 1 of each year, and each shall serve until the first meeting held after October 1 of the following year. In the event of the death, resignation, or removal of the chair from the board, the vice chair shall succeed as chair for the remainder of the unexpired term. In the event of the death, resignation, removal, or succession to the office of chair of a vice-chair, a successor shall be elected by the board to fill the remainder of the unexpired term as vice-chair. The chair, or in the absence of the chair, the vice-chair, shall preside at all meetings of the board. The chair of the board may appoint an executive secretary to the board, with the consent of the members of the board, who shall serve at the pleasure of the board. The board shall fix the executive secretary's salary. The executive secretary shall be the executive officer to the board but may not be a member of the board. The executive secretary shall have those powers and shall perform those duties as are prescribed by law and the rules and regulations of the board. A clerk and sufficient deputy clerks to adequately assist the board and executive secretary in the keeping of the records and in the performance of their duties may be appointed by the board subject to the Merit System.

(j) The board is subject to the Alabama Sunset Law of 1981, and is classified as an enumerated agency pursuant to Section 41-20-3. The board shall automatically terminate on October 1, 2004, and every four years thereafter, unless a bill is passed that the board be continued, modified, or reestablished.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 3.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-4. Powers and duties of board. [AL ST SEC 34-2A-4]

Current through End of 2002 Regular Session

Historical Notes

(a) It shall be the function and duty of the board to perform the following:

(1) Develop, impose, and enforce standards which shall be met by individuals in order to receive a license as an assisted living administrator, which standards shall be designed to insure that assisted living administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the

field of institutional administration, are qualified to serve as assisted living administrators.

(2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets these standards.

(3) Issue licenses to individuals determined, after application of the techniques, to meet these standards and revoke or suspend licenses previously issued by the board in any case where the individual holding any license is determined substantially to have failed to conform to the requirements of these standards.

(4) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as an assisted living administrator has failed to comply with the requirements of these standards.

(5) Establish and carry out procedures designed to insure that individuals licensed as assisted living administrators will, during any period that they serve as such, comply with the requirements of these standards.

(6) Conduct a continuing study and investigation of assisted living facilities and administrators of assisted living facilities within the state with a view to the improvement of the standards imposed for the licensing of these administrators and of procedures and methods for the enforcement of these standards with respect to administrators of assisted living facilities who have been licensed as such.

(b) The board may develop, impose, and enforce additional standards which shall be met by individuals in order to receive additional certification and/or license as a specialty care assisted living administrator, which standards shall be designed to insure that specialty care assisted living administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional administration, are qualified to serve as assisted living administrators.

(c) The board shall have the authority to perform the following:

(1) Make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to take other actions as may be necessary for the proper performance of its duties.

(2) Establish, provide, or approve various education programs or courses for assisted living administrators, and prescribe rules and regulations requiring applicants for licenses as assisted living administrators to attend certain programs or courses as a prerequisite to their being admitted to the examination or issued a license and requiring licensed assisted living administrators to attend these programs or courses as a prerequisite to their being issued any license renewal.

(Act 2001-1057, § 4.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-5. Rule-making. [AL ST SEC 34-2A-5]

Current through End of 2002 Regular Session

Historical Notes

The Alabama Administrative Procedure Act shall govern all rule-making proceedings of the board.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 5.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-6. Board of Examiners of Assisted Living Administrators Fund. [AL ST SEC 34-2A-6]

Current through End of 2002 Regular Session

Historical Notes

There is hereby established a separate special revenue trust fund in the State Treasury to be known as the Board of Examiners of Assisted Living Administrators Fund. All receipts collected by the board under the provisions of this chapter shall be deposited into this fund and shall be used only to carry out the provisions of this chapter. Receipts may be disbursed only by warrant of the state Comptroller upon the State Treasury, upon itemized vouchers approved by the chair of the board. No funds may be withdrawn or expended except as budgeted and allotted according to Sections 41-4-80 to 41-4-98, inclusive, and Section 41-19-12, and only in amounts as stipulated in the general appropriation bill or other appropriation bills. A financial audit shall be conducted by the Examiners of Public Accounts of all receipts and expenditures, and a written report of the audit shall be given to each board member.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 6.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-7. Advisory council. [AL ST SEC 34-2A-7]

Current through End of 2002 Regular Session

Historical Notes

The governing body of the Assisted Living Association of Alabama, Inc., shall constitute an advisory council to the board, and the board shall be required to counsel

with the advisory council in connection with the administration of this chapter.
(Act 2001-1057, 4th Sp. Sess., p. 1032, § 7.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-8. Requirements for examination; fees. [AL ST SEC 34-2A-8]

Current through End of 2002 Regular Session

Historical Notes

(a) The board shall admit to examination for licensure as an assisted living administrator any candidate who submits evidence of good moral character and suitability as prescribed by the board and who submits evidence to the board that he or she is at least 19 years of age, a citizen of the United States, or that he or she has duly declared his or her intention of becoming a citizen of the United States, that he or she is a high school graduate or has completed an educational program equivalent thereto, and that he or she has completed any additional educational requirements prescribed by the board. The board may exempt the educational requirements for practicing administrators on March 1, 2002, based on acceptable experience and tenure in the applicant's current position. Each candidate shall also be required, prior to admission to the examination, to pay an examination fee established by the board pursuant to its rule-making authority.

(b) The board may establish an application fee for the internship or administrator in training (AIT) program, if such a program is established, and a fee for preceptor, certification, and recertification of any administrator in training (AIT) program pursuant to its rule-making authority.

(Act 2001-1057, § 8.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-9. Examination. [AL ST SEC 34-2A-9]

Current through End of 2002 Regular Session

Historical Notes

(a) The board shall determine the subjects of examinations for applicants for licensure as assisted living administrators, or licensure or certification of specialty care assisted living administrators if established, and the scope, content, and format of the

examinations, which in any examination shall be the same for all candidates. The examinations shall include examination of the applicant to demonstrate his or her proficiency in the rules and regulations of health and safety; provided, however, that the examination given to initial provisional licensees shall be limited to these rules and regulations. The examinations may consist of written or oral questions, or both.

(b) Examinations shall be held at least four times each year, at times and places designated by the board.

(Act 2001-1057, § 9.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-10. Issuance of license. [AL ST SEC 34-2A-10]

Current through End of 2002 Regular Session

Historical Notes

(a) The board shall issue a license to an applicant, on a form provided for that purpose by the board, certifying that the applicant has met the requirements of the laws, rules, and regulations entitling him or her to serve, act, practice, and otherwise hold himself or herself out as a duly licensed assisted living administrator and has paid a fee established by the board pursuant to its rule-making authority for original licensure, provided the applicant meets all of the following qualifications:

(1) Has successfully complied with the educational and training requirements of this chapter and of the rules and regulations of the board promulgated under this chapter.

(2) Has paid an application fee established by the board pursuant to its rule-making authority for all applicants.

(3) Has qualified for and passed the examination provided for in this chapter.

(b) The board may establish and collect a fee pursuant to its rule-making authority for the issuance of a temporary emergency permit issued pursuant to Section 34-2A-2.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 10.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-11. Administrators licensed in other state; licensed nursing home administrators; acute care hospital administrators, etc. [AL ST SEC 34-2A-11]

(a) The board may, subject to this chapter and the rules and regulations of the board prescribing the qualifications for an assisted living administrator license, issue a license to an assisted living administrator who has been issued a license by the proper authorities of any other state or issued a certificate of qualification by any national organization, upon complying with the provisions of licensure, payment of a fee established by the board pursuant to its rule-making authority, and upon submission of evidence satisfactory to the board of all of the following:

(1) That the other state or national organization maintained a system and standards of qualification and examinations for an assisted living administrator license or certificate which were substantially equivalent to those required in this state at the time the other license or certificate was issued by the other state or national organization.

(2) That the other state gives similar recognition and endorsement to assisted living administrator licenses of this state. The board may charge a fee for completion of a reciprocity questionnaire, pursuant to its rule-making authority.

(b) Any person who has a license in good standing, and continuously maintains such license as a licensed nursing home administrator, shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter the good standing of the nursing home administrator license.

(2) If any person requests an exemption from the licensure requirements provided herein during the initial 18-month licensing period described in subsection (a) of Section 34-2A-2, the initial license issued shall be a provisional license until the end of the 18-month period at which time, and thereafter, an active license shall be issued.

(3) Any assisted living administrator license issued according to subdivision (1) or subdivision (2) of this subsection shall become void if the requisite nursing home administrator license becomes void. Further, the license shall become inactive, as described in subsection (e) of Section 34-2A-12, if the licensee no longer has responsibility for an assisted living facility. After 12 months in inactive status, the license shall expire and become void.

(c) Any person who is an administrator/chief executive officer of an acute care hospital shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter their continued employment as an administrator/chief executive officer of an acute care hospital.

(2) If any person requests an exemption from the licensure requirements provided herein during the initial 18-month licensing period described in subsection (a) of Section 34-2A-2, the initial license issued shall be a provisional license until the end

of the 18-month period at which time, and thereafter, an active license shall be issued.

(3) Any assisted living administrator license issued according to subdivision (1) or subdivision (2) of this subsection shall become void if the person no longer is the administrator/chief executive officer of a hospital. Further, the license shall become inactive, as described in subsection (e) of Section 34-2A-12, if the licensee no longer has responsibility for an assisted living facility. After 12 months in inactive status, the license shall expire and become void.

(4) For the purpose of this subsection, the term "acute care hospital" shall be defined as a health institution planned, organized, and maintained for offering to the public generally facilities and beds for use in the diagnosis and/or treatment of illness, disease, injury, deformity, abnormality, or pregnancy, when the institution offers such care of service for not less than 24 consecutive hours in any week to two or more individuals not related by blood or marriage to the owner and/or chief executive officer/administrator, and, in addition, the hospital may provide for the education of patients, medical and health personnel, as well as conduct research programs to promote progress and efficiency in clinical and administrative medicine.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 11.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

Code Commissioner's Notes

In 2002, the Code Commissioner in subsection (a) inserted "board of all of the following" for "board all of the following" to correct a typographical error; in subdivision (2) of subsection (b) inserted "thereafter, an active license shall be issued" for "thereafter, shall an active license be issued" to correct a grammatical error; and after the third sentence in subdivision (3) of subsection (c) inserted (4) to create a new subdivision.

§ 34-2A-12. Renewal, expiration of license; inactive status; maintenance of records; continuing education. [AL ST SEC 34-2A-12]

Current through End of 2002 Regular Session

Historical Notes

(a) Every individual who holds a valid current license as an assisted living administrator issued by the board under this chapter shall immediately upon issuance have the right and privilege of acting and serving as an assisted living administrator and of using the abbreviation "A.L.A." after his or her name. Thereafter, the individual shall annually be required to make application to the board for a renewal of license and to report any facts requested by the board on forms provided for that purpose.

(b) Upon making application for a renewal of a license, the individual shall pay an annual license fee established as determined by the board pursuant to the rule-making authority and, at the same time, shall submit evidence satisfactory to the board that during

the year immediately preceding application for renewal he or she has complied with the requirements of the board concerning the continuation of education of assisted living administrators.

(c) Upon receipt of the application for renewal of a license, the renewal fee, and the evidence with respect to continuing education, the board shall issue a license renewal to the assisted living administrator.

(d)(1) Failure to secure an annual renewal of a license based on a failure to meet the continuing education requirements, shall result in the expiration of the license. An expired license may not be reactivated. All persons holding an expired license shall be required to submit a new application and follow all procedures for licensure of a new applicant.

(2) A licensee who complies with the continuing education requirements, but who does not renew within 90 days following its due date, shall be deemed delinquent and may renew within the 90-day period by paying a late renewal fee established by the board pursuant to its rule-making authority. A license that is not renewed within the 90-day period shall be deemed expired and is subject to reapplication as provided in subdivision (1).

(e) A licensee who holds a current license and who is not practicing as an assisted living administrator may place that license into an inactive status upon written application to the board. Any licensee whose license has been placed on inactive status may not engage in the practice of assisted living administration.

(f) A licensee whose license is on inactive status who wishes to reactivate that license may do so by making application to the board. The applicant shall attach proof of having completed twice the annual hours' requirement of approved continuing education credits within one year of making application for license reactivation and shall pay a reactivation fee established by the board pursuant to its rule-making authority. A licensee may not have his or her license in inactive status for more than five years. After five years in inactive status, the license automatically expires.

(g) The board shall maintain a file of all applications for licensure that includes the following information on each applicant: Residence, name, age, the name and address of his or her employer or business connection, the date of application, educational experience qualifications, action taken by the board, serial numbers of licenses issued to the applicant, and the date on which the board acted on or reviewed the application.

(h) The board shall maintain a list of current licensees of the board and shall furnish the list on demand to any person who pays a fee established by the board pursuant to its rule-making authority. The State Department of Public Health and other state agencies with a direct need shall be provided copies at no cost.

(i) The board shall adopt a program for continuing education for its licensees by September 1, 2002. After that date, successful completion of the continuing education program by board licensees shall be required in order to obtain a renewal license.

(j) Continuing education shall not result in a passing or failing grade.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 12.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

Code Commissioner's Notes

In 2002, the Code Commissioner in the first sentence of subdivision (2) of subsection (d) inserted "renew within 90 days following" for "renew within days following" to correct a typographical error.

§ 34-2A-13. Disciplinary actions; review. [AL ST SEC 34-2A-13]

Current through End of 2002 Regular Session

Historical Notes

(a) The board may discipline its licensees by the adoption and collection of administrative fines, not to exceed one thousand dollars (\$1,000) per violation, and may institute any legal proceedings necessary to effect compliance with this chapter.

(b) The license of any person practicing or offering to practice assisted living administration may be revoked or suspended by the board, or the person may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of, but not limited to, the following cases:

(1) Upon proof that the person has willfully or repeatedly violated any of the provisions of this chapter or the rules enacted in accordance with this chapter.

(2) Conduct or practices deemed to be detrimental to the lives, health, safety, or welfare of the residents or patients of any assisted living facility or health care facility in this state or any other jurisdiction.

(3) Conviction in this state or any other jurisdiction of a felony or any crime involving the physical, sexual, mental, or verbal abuse of an individual.

(4) Conviction in this state or any other jurisdiction of any crime involving fraud.

(c) The board shall have the jurisdiction to hear all charges brought under this section against any person having been issued a license as an assisted living administrator or having been issued a license as a provisional assisted living administrator and, upon a hearing, shall determine the charges upon their merits. If the board determines that disciplinary measures should be taken, the board may revoke his or her license, suspend him or her from practice, or reprimand, censure, or otherwise discipline the person.

(d) All proceedings under this section shall be conducted by the board, according to its administrative rules, and the Alabama Administrative Procedure Act.

(e) Any party aggrieved by a final decision or order of the board suspending, revoking, or refusing to issue a license is entitled to a review of the decision or order by taking an appeal to the circuit court of the county in which the assisted living administrator or applicant resides. In such cases, the appeal shall be taken by filing notice thereof with the circuit court within 30 days of the date of notice by the board of its decision. Appeals from any order or judgment rendered thereon by the circuit court to the Supreme Court of Alabama shall be available as in other cases.

(f) The board shall report to the Department of Public Health all final disciplinary actions taken under this section.

(Act 2001-1057, § 13.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-14. Reissuance of license. [AL ST SEC 34-2A-14]

Current through End of 2002 Regular Session

[Historical Notes](#)

The board may, for good cause shown upon such terms as the board may prescribe, reissue a license to any person whose license has been revoked.
(Act 2001-1057, § 14.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-15. Violations. [AL ST SEC 34-2A-15]

Current through End of 2002 Regular Session

[Historical Notes](#)

(a) It shall be a misdemeanor for any person to commit any of the following:

(1) Sell or fraudulently obtain or furnish any license or aid or abet in selling or fraudulently obtaining or furnishing any license.

(2) Practice as an assisted living administrator under cover of any license illegally or fraudulently obtained or unlawfully issued.

(3) Practice as an assisted living administrator or use in connection with his or her name any designation tending to imply that he or she is an assisted living administrator unless duly licensed to so practice under this chapter.

(4) Practice as an assisted living administrator or use in connection with his or her name any designation tending to imply that he or she is an assisted living administrator during the time his or her license issued under this chapter shall be expired, suspended, or revoked.

(5) Otherwise violate any of the provisions of this chapter.

(b) A violation of this chapter shall be a Class C misdemeanor punishable as provided by law.

(Act 2001-1057, § 15.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-16. Construction of chapter. [AL ST SEC 34-2A-16]

Current through End of 2002 Regular Session

Historical Notes

Nothing in this chapter shall be construed so as to limit, conflict with, or diminish the authority granted to the State Board of Public Health to license and regulate assisted living facilities pursuant to Chapter 21 of Title 22. The board may not set any requirement, promulgate any rule, or take any action in conflict with the rules of the State Board of Public Health.

(Act 2001-1057, § 16.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

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Alabama Board of Examiners of Assisted Living Administrators October 2002 – September 2003

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July 2, 2003

Mr. John Norris
Director, Operational Division
Department of Examiners of Public Accounts
P.O. Box 302251
Montgomery, AL 36130-2251

Dear Mr. Norris:

Listed below are the responses to the significant items found during the Review of Operations by the Department of Examiners of Public Accounts:

Significant item #1

The board adopted an administrative rule granting the board subpoena power without specific statutory authority, an improper expansion of the board's statutory authority.

Response: The Attorney General in Opinion 86-000157 does conclude that absent a specific provision granting the power to subpoena witnesses, such power does not exist and can not be added by interpretation. According to the board's legal representative from the Office of Attorney General, the Administrative Procedures Act was amended in 1993 to add Section (c) to 41-22-12, which states that "In a contested case, on motion of a party, the presiding officer conducting the hearing may issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the rules of civil procedure. The agency may set a reasonable fee by rule for the issuance of a subpoena to be paid by the moving party." The board's enabling statute and rules and regulations do not forbid this action, or make mention of it; therefore the Administrative Procedure Act, as amended in 1993, fills in the gap to allow this action.

Significant item #2

The board improperly adopted an administrative rule setting the fee charged for a check returned for insufficient funds at an amount exceeding the maximum allowed law.

Response: At the June 12, 2003 called meeting of the Board of Examiners of Assisted Living Administrators, the board members unanimously approved the following

motion: "...to change the Board's bad check fee from \$35.00 to \$30.00 in order to be in compliance with the state law." Chapter 135-X-13-.01 of the Alabama Board of Examiners of Assisted Living Administrators Rules and Regulations does not specify the dollar amounts concerning fees; therefore, there is no need to make an amendment to the rules and regulations on this item. The board will ensure that the "return check fee" is \$30.00 when the fee requirements are published after the last board meeting held prior to October 1 of this year.


Significant item #3

The terms of all members of the board are set to expire simultaneously.

Response: Due to the way the enabling statute was written and passed, the terms of all nine initial members will expire April 18, 2005. Board members have informally discussed the possibility of a few members voluntarily stepping down one year prior to the expiration of their terms or the possibility of pursuing action to have the language in the statute changed. But, at this time, the board has passed no official resolution concerning this matter.

As the executive secretary of a new state agency, I thank you and your examiners for your assistance in reviewing our operations and calling to our attention items that need to be addressed and corrected. Please do not hesitate to call me at (334) 262-6719 if you have any questions concerning these responses.

Sincerely,

A handwritten signature in cursive script that reads "Theresa Jordan".

Theresa Jordan
Executive Secretary